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# **MEDICAL NEGLIGENCE, MALPRACTICE, AND LIABILITY IN INDIA**

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Medical negligence in India sits at a difficult crossroads between law, ethics, and the uncertainties of science. It is an area where the consequences of error are deeply human, yet the standards of liability must remain legally precise. Over the decades, Indian jurisprudence has attempted to strike a careful balance: ensuring accountability for genuine negligence while protecting medical professionals from undue harassment. This balance has acquired renewed significance in light of recent statutory transformations, particularly the transition from the Indian Penal Code to the Bharatiya Nyaya Sanhita, 2023, and the procedural restructuring under the Bharatiya Nagarik Suraksha Sanhita, 2023. These developments, coupled with evolving judicial trends, signal a gradual but meaningful shift toward a more evidence-based and nuanced medico-legal framework.

At the heart of medical negligence lies the doctrine of duty of care. A doctor is not expected to guarantee a cure, nor to perform at a standard of perfection, but is required to exercise reasonable skill and competence consistent with the standards of the profession. Indian courts have long relied on principles derived from English law, particularly the Bolam test, which provides that a medical professional is not negligent if their conduct aligns with a practice accepted as proper by a responsible body of medical opinion. While this test has faced criticism globally for being overly deferential to the medical fraternity, Indian courts have adapted it in a way that accommodates both professional autonomy and patient rights.

The foundational case of *Laxman Balkrishna Joshi v. Trimbak Babu Godbole* established the threefold duty of care owed by a doctor: deciding whether to undertake the case, determining the appropriate treatment, and administering that treatment with due diligence. These duties remain central to determining negligence. A breach at any of these stages, coupled with resultant harm, may give rise to liability. However, courts have consistently emphasized that a mere error of judgment does not amount to negligence unless it is so unreasonable that no competent professional would have acted similarly.

The expansion of medical liability into the consumer protection regime marked a turning point. The decision in *Indian Medical Association v. V. P. Shantha* brought medical services within the ambit of “service” under consumer law, thereby enabling patients to seek redressal through consumer forums. This shift democratized access to justice by offering a faster and more accessible alternative to civil courts. The Consumer Protection Act, 2019, further strengthened this framework by enhancing procedural efficiency and expanding the scope of consumer rights. As a result, patients today have multiple avenues—civil suits, consumer complaints, and criminal prosecution—to pursue claims of negligence.

Despite this expansion, the threshold for criminal liability remains deliberately high. Under the earlier regime, Section 304A of the Indian Penal Code addressed causing death by negligence. This provision has now been replaced by Section 106 of the *Bharatiya Nyaya Sanhita, 2023*. While the statutory language continues to penalize negligent acts resulting in death, the judiciary has consistently maintained that criminal liability for medical professionals requires proof of gross negligence rather than mere inadvertence. This distinction is crucial, as criminal prosecution carries severe consequences, including imprisonment and reputational damage.

The Supreme Court’s judgment in *Jacob Mathew v. State of Punjab* laid down important safeguards to prevent the misuse of criminal law against doctors. The Court held that before initiating criminal proceedings, there must be prima facie evidence supported by an independent medical opinion. It also cautioned against the routine arrest of doctors, emphasizing that such actions should be reserved for cases where they are necessary for investigation or to prevent evasion of justice. These guidelines continue to shape the approach of courts and investigative authorities, ensuring that criminal liability is not invoked lightly.

Recent judicial developments indicate a further refinement of these principles. Courts have increasingly moved away from a results-oriented approach toward one that focuses on the process and reasoning underlying medical decisions. A significant clarification by the Supreme Court in 2025 underscored that an adverse outcome, by itself, does not establish negligence. Medicine is not an exact science, and even the most competent professionals may encounter complications beyond their control. This emphasis on distinguishing outcome from fault reinforces the need for rigorous evidence and expert testimony in negligence cases.

Another notable trend is the growing recognition of institutional responsibility. The decision in *Kamineni Hospitals v. Peddi Narayana Swami* reaffirmed the doctrine of vicarious liability,

holding hospitals accountable for the acts and omissions of their staff as well as systemic deficiencies in infrastructure and protocols. This approach reflects an understanding that modern healthcare is increasingly institutional rather than individual. Patients often rely on the reputation and systems of hospitals, and it is therefore appropriate to hold such institutions responsible for ensuring standards of care, proper record-keeping, and adherence to established procedures.

The role of expert evidence has become more central in this evolving landscape. Courts are increasingly cautious about relying on presumptions such as *res ipsa loquitur*, particularly in complex medical cases where outcomes may have multiple plausible explanations. Instead, there is a clear preference for detailed expert analysis that can illuminate whether the standard of care was met. This shift enhances the objectivity of judicial determinations but also raises questions about the availability, independence, and consistency of expert opinions.

While the legal framework has matured, challenges remain. One of the most pressing concerns is the rise of defensive medicine, where doctors order unnecessary tests or avoid high-risk procedures to shield themselves from potential litigation. This practice not only increases healthcare costs but may also compromise patient care. At the same time, patients often face significant hurdles in proving negligence, including limited access to medical records, the technical complexity of evidence, and the inherent asymmetry of knowledge between doctors and patients.

Addressing these challenges requires thoughtful policy interventions. The establishment of specialized medical boards to provide independent opinions at the pre-litigation stage could help filter out frivolous claims while ensuring that genuine grievances are addressed. The adoption of a no-fault compensation system for certain categories of medical injury could offer timely relief to patients without the need for prolonged litigation, thereby reducing the adversarial nature of disputes. Additionally, the mandatory digitization of medical records would enhance transparency and reduce the scope for manipulation, providing courts with reliable evidence.

The statutory changes introduced by the *Bharatiya Nyaya Sanhita* and the *Bharatiya Nagarik Suraksha Sanhita* also present an opportunity to streamline procedures and improve coordination between legal and medical institutions. Clear guidelines on investigation, prosecution, and expert consultation can help ensure consistency and fairness in the handling

of negligence cases. At the same time, continuous judicial oversight remains essential to prevent the misuse of legal provisions and to adapt the law to emerging challenges in healthcare.

Ultimately, the law on medical negligence in India reflects a broader tension between accountability and autonomy. Patients have a legitimate expectation of safe and competent treatment, and the legal system must provide effective remedies when this expectation is breached. At the same time, doctors must be able to exercise their professional judgment without the constant fear of litigation. Striking the right balance is not a static exercise but an ongoing process that requires sensitivity to both legal principles and medical realities.

As India's healthcare system continues to evolve, the medico-legal framework must keep pace with advancements in technology, changes in patient expectations, and the increasing complexity of medical practice. The recent statutory and judicial developments suggest a movement toward greater clarity, fairness, and evidence-based decision-making. If implemented effectively, these changes have the potential to strengthen trust between doctors and patients, reduce unnecessary litigation, and ensure that justice is both accessible and equitable.

In this evolving landscape, the role of the judiciary remains pivotal. Courts act as the final arbiters, interpreting statutes, assessing evidence, and setting precedents that shape future conduct. Their cautious and balanced approach in recent years offers reason for optimism. By emphasizing expert evidence, rejecting simplistic assumptions, and recognizing the realities of medical practice, the judiciary is helping to create a more rational and just system.

The future of medical negligence law in India will depend on how well these principles are translated into practice. A system that is transparent, efficient, and fair can not only resolve disputes but also contribute to improving standards of care. In the end, the goal is not merely to assign liability but to foster a healthcare environment where both patients and doctors can function with confidence and trust.